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April 4, 2008

### VIA CM/ECF and VIA HAND DELIVERY

The Honorable Mary Pat Thyng  
J. Caleb Boggs Federal Building  
844 North King Street  
Wilmington, DE 19801

Re: Roquette Freres v. SPI Pharma, Inc., et al., C.A. No. 06-540 (GMS)(MPT)

Dear Magistrate Judge Thyng:

As Your Honor is aware, we are counsel for Defendant SPI Pharma, Inc. ("SPI") in the above-referenced matter. We write to identify open issues that require decision pursuant to the reference in Judge Sleet's April 2 Order and respectfully request entry of a new scheduling order for the remaining phases of the case.

There are three pending issues. They are: (i) Defendants Anhydro U.K. Ltd., Drytec Contract Processing Ltd. and Anhydro Holding A/S's (together, "co-defendants") motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction (D.I. 70-74, 84, 88), for which the parties have consented (D.I. 39) to Your Honor's jurisdiction, subject to the approval of the Court; (ii) SPI's December 28, 2007 motion for leave to amend its Answer and Counterclaims to add an affirmative defense and counterclaim of unenforceability of the '777 patent due to inequitable conduct (D.I. 147, 148, 152, 155); and (iii) Roquette's motion for leave to file a sur-reply in response to SPI's reply brief (D.I. 156-158, 162). We had understood in January that Your Honor is working on these motions and that the parties will receive decisions in due time.

With regard to a litigation schedule, the parties had been operating under a stipulated scheduling order entered by Your Honor that set April 17, 2008 as the date for the conclusion of all discovery, including service of expert reports and taking and defending fact and expert depositions. Pursuant to a separate stipulated scheduling order, also entered in the case by Your

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The Honorable Mary Pat Thyng

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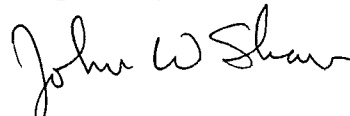
Honor on January 22, 2008, the parties agreed and were ordered to exchange affirmative expert witness reports on February 15, 2008 and rebuttal expert witness reports on March 10, 2008. (D.I. 151).

On February 1, 2008, the case was reassigned to Judge Sleet. On February 7, 2008, Judge Sleet issued a Case Management Order rescinding all scheduling orders previously entered. SPI went forward with serving its affirmative expert reports on February 15, 2008 in the belief that the Court's Case Management Order did not alter the parties' recently stipulated dates for exchange of expert reports. In contrast, Roquette's counsel has taken the view that the stipulated expert discovery schedule was no longer in effect and therefore did not serve its affirmative expert reports on SPI on February 15. Roquette's counsel, in possession of SPI's affirmative expert reports for well over one month, does not intend to serve its own affirmative expert reports until after a new scheduling order is entered by the Court.

SPI believes both parties desire to conclude discovery as expeditiously as possible. Accordingly, we request Your Honor's indulgence in convening a Scheduling Conference at your earliest convenience to set dates for the conclusion of discovery, submission of *Markman* and dispositive motion papers and trial.

We are available at the convenience of the Court should Your Honor have any questions.

Respectfully submitted,



John W. Shaw

JWS:pls

cc: Clerk of the Court (By Hand Delivery)  
Douglas Rigler, Esquire (By CM/ECF)  
Julia Heaney, Esquire (By CM/ECF)  
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